

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

Breedyk Dairy, Ltd. Co.,
a New Mexico Limited Liability Company,

Case No. 11-16-11218-JA

Debtor,

OBJECTION TO EMERGENCY MOTION FOR RELIEF FROM AUTOMATIC STAY

COMES NOW DBS Commodities, Ltd., Co. ("DBS"), by and through its counsel, Giddens, Gatton & Jacobus, P.C., (Chris M. Gatton), and for its objection to the Emergency Motion for Relief from Automatic Stay (the "Motion") filed by Robinson Farms, Inc. ("Movant") on May 27, 2016 (Docket No. 20), STATES:

1. In the Motion, Movant states that it has a lien that is perfected and prior to any other claims on 2,528.77 adjusted tons of silage (the "Crop") which is being used by the Debtor as feed.

2. Movant, however, does not have a senior lien on the Crop. Movant's claim related back to approximately May 11, 2016, based on a claim of lien filed on May 27, 2016.

3. On or about February 12, 2013, Debtor executed a Promissory Note in favor of DBS in the amount of \$1,601,480.61. A true and correct copy of the Promissory Note is attached hereto as **Exhibit A**.

4. On or about January 29, 2007, Debtor executed a Security Agreement in favor of DBS which secured performance of all then existing or future obligations. A true and correct copy of this Security Agreement is attached hereto as **Exhibit B**.

5. The collateral described in the Security Agreement included “all feed inventory” and all “other personal property used or useful in connection with the operation of Breedyk Dairy.”

6. The Crop is feed inventory and/or personal property used or useful in connection with the Debtor’s operations. It is thus collateral under the Security Agreement.

7. On or about February 27, 2013, a UCC-1 Financing Statement was filed with the Secretary of State as File No. 20130003607C, which perfected DBS’ interest in the aforementioned collateral. A true and correct copy of this UCC-1 is attached hereto as **Exhibit C**.

8. As of the May 17, 2006, the petition date, Debtor owed DBS \$1,323,702.14 pursuant to the Promissory Note. A true and correct summary of the amount owed is attached hereto as **Exhibit D**.

9. The perfection of DBS’ security interest pre-dates Movant’s claim of lien by almost three years.

WHEREFORE, DBS Commodities, Ltd., Co. respectfully requests that the Court enter an Order:

- A. Denying all relief requested in the Motion;
- B. Alternatively, ordering Movant to pay DBS the proceeds of the sale of the collateral; and
- C. For such other and further relief as the Court deems just and proper.

Respectfully submitted:

Giddens, Gatton & Jacobus P.C.,

/s/Chris M. Gatton,
Submitted electronically, 6.3.16
10400 Academy, Suite 350
Albuquerque, NM 87111
Phone: (505) 271-1053
Facsimile: (505) 271-4848
chris@giddenslaw.com
Attorneys for DBS Commodities

CERTIFICATE OF SERVICE

I certify that on the 3rd day of June, 2016, I filed the foregoing document electronically through the CM/ECF system, which caused all parties or counsel requesting notice to be served by electronic means on the date of filing.

/s/Chris M. Gatton,
Submitted electronically 6.3.16

PROMISSORY NOTE

\$1,601,480.61

**Dexter, New Mexico
February 12, 2013**

FOR VALUE RECEIVED, the undersigned (hereinafter referred to as "Maker", which term includes the successors and assigns of the undersigned) promises to pay to the order of DBS Commodities, Ltd. Co. (hereinafter referred to as "Holder", which term includes its successors in interest, assigns and any subsequent holder of this Note) at 184 E. Darby Road, Dexter, New Mexico 88230 or at such other place as Holder may designate in writing, the principal sum of \$1,601,480.61 in lawful money of the United States of America, with interest thereon at the rate of 18% per annum. Maker shall, on demand, fully pay all sums due and owing to Holder.


In the event this Note is placed in the hands of an attorney for collection, Maker shall pay Holder all court costs incurred in the collection, and reasonable attorney's fees.

The Maker and any endorsers, guarantors, sureties or other parties whose signatures appear on this Note hereby waive presentment, protest and demand, notice of protest, demand and dishonor and notice of non-payment of this Note (except as provided above) and hereby agree that no extension of the time for payment of this Note, either principal or interest, no waiver of any existing default, no release of any security for this Note and no indulgence of any sort shall operate to release, discharge, modify, change or affect the original liability of the undersigned or any endorser, guarantor, surety or other party to this Note.

The undersigned and all parties whose signatures appear below shall be deemed to be bound by the provisions of this Note, whether the signatures below were affixed at the same or different times. The undersigned and all parties whose signatures appear below hereby consent to the jurisdiction of any court located within the State of New Mexico over their respective persons and agree that, if any one of them are or become a non-resident of New Mexico, service of process may be had upon them wherever he, she or it may be found and that such service shall be valid and binding as if personal service had been made within the State of New Mexico.

This Note shall be governed as to validity, interpretation, construction, effect, enforceability and in all other respects by the laws and decisions of the State of New Mexico. If a court of competent jurisdiction should determine that any provision of this note is invalid or unenforceable, the remaining provisions of this Note shall continue in full force and effect except that Holder may elect to accelerate maturity and demand immediate payment of the entire unpaid principal balance and accrued interest and late charges then due under this Note.

BREEDYK DAIRY, LTD. CO.


Arle Breedyk, Jr., Manager



SECURITY AGREEMENT

This Agreement dated January 29, 2007 is governed by the Uniform Commercial Code of the State of New Mexico.

Borrower(s) and address(es)

BREEDYK DAIRY, LTD. CO.
7150 Vineyard Rd.
Dexter, New Mexico 88230

Secured Party
Address

DBS COMMODITIES, LTD.CO.,
184 E. Darby Rd.
Dexter, New Mexico 88230

In this Security Agreement, the words I, me, my and mine mean the Borrower. You and your mean the Secured Party.

I agree to give you a security interest in my property described below. If I don't repay any amounts I may owe you, or break a promise I've made in any note, loan or credit agreement I may have with you, you can take this property and sell or use it as described below.

By granting you a security interest in this collateral, I intend to provide you with security for payment and performance of all my obligations to you which now exist or may exist in the future.

Any of my property covered by your security interest is called "collateral". Any additions and replacements to the property, or any proceeds from the sale of the property are also part of the collateral. The collateral in this agreement is

All livestock inventory (including but not limited to dairy cows, heifers, and calves), all feed inventory, and all equipment (including but not limited to rolling stock, contract rights, accounts, general intangibles, and other personal property used or useful in connection with the operation of Breedyk Dairy and Break-Away Dairy, together with all offspring, proceeds, and replacements thereof.

The collateral is used primarily for:

☐ Personal, family or household purposes
☒ Business
☐ Farming

I agree to help you do all that's necessary to protect your security interest in the collateral.

I am not using money you are lending to me to buy the collateral. If I am, you will have what is called a "purchase money security interest" in the collateral. This will give you more protection against others who might claim the collateral is theirs.

I own the collateral and no one else has any interest in it or claim against it except



as to certain portions thereof, there are prior security interests in favor of third parties. I agree not to sell, lease, or give it as security to anyone else until I have repaid the loan in full.

While any part of our loan is unpaid, I promise:

1. to use the collateral carefully and keep it in good repair;
2. to obtain your written permission before making any major alterations;
3. to tell you in writing before changing my address or the address where the collateral is kept;
4. to help you protect the rights I have given you;
5. not to use or permit anyone to use the collateral for any unlawful purposes; and
6. to permit you to inspect the collateral at reasonable times.

I will keep the collateral insured for its full value against loss and damage with an insurance company that you accept. The policies must say that you are to be paid if there's a loss. I will deliver the policies to you, if you request.

If the collateral is lost or damaged, you can use the insurance proceeds to replace or repair it, or to repay any amounts I owe you.

I will pay all taxes and fees on the collateral. You can insure the collateral, or pay any tax or fee if I don't (although you don't have to). If you do pay taxes or fees, I will repay you with interest at the highest rate allowed by law.

I agree that without giving me any advance notice, you can require me to pay the unpaid balance of our loan at once if I break any promise made under this security agreement or under any note, loan, or credit agreement between us.

I will be in default:

1. If I don't make a payment when due or I don't fully repay any loan I may have with you.
2. If I break any promise I have made to you in this agreement, or under any note or loan or credit agreement between us.
3. If I become insolvent or file bankruptcy.
4. If a lien is put on the collateral, or if it's confiscated.
5. If the collateral is misused, or in danger of depreciating too much.
6. If I do anything that reduces my ability or willingness to pay.
7. If I die or become incompetent.
8. If my insurance is cancelled.

If I failed to do anything I have promised to do in this agreement you may do it and any money spent for this purpose shall be added with interest to the loan secured hereby.

If I am in default you can take possession of the collateral. I will deliver the collateral to you at a time and place you choose. If I don't, or if you wish, you can take possession of the collateral without giving me advance notice. If you take possession of the collateral you will not be responsible for any of my property left inside the collateral that is not covered by this agreement. You will try to return the property to me.

After you have taken possession of the collateral, you can sell it and apply the proceeds to the unpaid balance of our loan. You will give me ten days notice of any public

sale or of the date after which you will be free to have a private sale. I will have to reimburse your expenses for taking possession and selling the collateral, court costs and reasonable attorney's fees. If the sale proceeds are not enough to pay you the unpaid balance of my loan and any interest I owe you, and to reimburse you for these expenses, I still will have to pay the difference. I am entitled to any excess if the sales proceeds are more than I owe you.

You also have all the rights and remedies regarding taking possession, retention and sale of the collateral and use of the proceeds as are permitted by the Uniform Commercial Code.

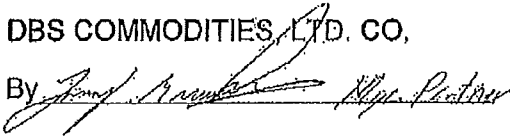
You are authorized to file a Financing Statement.

Because you excuse one default by me does not mean later defaults will be excused.

I've read this agreement and received a copy. I understand it contains all my rights and responsibilities. No oral statements will be binding. All changes must be approved by you in writing. My heirs and legal representatives will also be responsible under this agreement.

Secured Party:

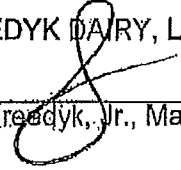
DBS COMMODITIES, LTD. CO,

By 

Date: February 20, 2013

Borrower:

BREEDYK DAIRY, LTD. CO.


Arle Breedyk, Jr., Manager

Date: February 22, 2013



State of New Mexico
Office of the New Mexico Secretary of State
Diana J. Duran
FILING ACKNOWLEDGMENT
02/27/2013

UCC Search Inc.
PO Box 9315
Santa Fe, NM 87504-9315

File Number: 201300038070 Filing Date: 02/27/2013 1:54 PM Filing Type: UCC
Lapse Date: 02/27/2018

Pages: 1

Indexed Debtor(s):

Commercial: Bredyk Dairy, Ltd. Co., 7150 Vineyard Road, Dexter, NM, 88230

Secured Party(s) / Assignee(s):

Commercial: DBS Commodities, Ltd. Co., 184 E. Darby Road, Dexter, NM, 88230

Other Information:

Please review the above information that was indexed in our database. We have indexed the above information exactly as it was presented on your enclosed filing. If there is an error please contact our office at the number listed below. If you wish to make a change from your original document an amendment (UCC-3) with the appropriate fee is required.

Please refer to the Secretary of State's web page at
www.sos.state.nm.us for additional filing information.

SECRETARY OF STATE

Folder: T1305804008 Tracking:
T1305804008

EXHIBIT

tabbles

File Number: 20130003807G
Date Filed: 02/27/2013 01:54 PM
Dianna J. Duran
Secretary of State

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

PLS DON'T MAIL-PUT IN FOLDER
UCC Search
P. O. Box 9316
Santa Fe, NM 87504

State of New Mexico
UCC1 Initial Filing 1 Page(s)



T1305804008

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only pass debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

Breedyk Dairy, Ltd. Co.

OR 1b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

7150 Vineyard Road

Dexter

NM

88230

USA

1d. ADDITIONAL INFORMATION

ADD. INFO FOR
ORGANIZATION
DEBTOR

1e. TYPE OF ORGANIZATION
LLC

1f. JURISDICTION OF ORGANIZATION
NM

1g. ORGANIZATIONAL ID # if any
1651470

☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only pass debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. ADDITIONAL INFORMATION

ADD. INFO FOR
ORGANIZATION
DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID # if any

☐ NONE

3. SECURED PARTY'S NAME (NAME OF TOTAL ASSIGNEE OF ASSIGNORSE) - insert only pass secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

DBS Commodities, Ltd. Co.

OR 3b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

184 E. Darby Road

Dexter

NM

88230

USA

4. This FINANCING STATEMENT covers the following collateral:

All livestock inventory (including but not limited to dairy cows, heifers and calves), all feed inventory, and all equipment (including but limited to rolling stock, contract rights, accounts, general intangibles, and other personal property used or useful in connection with the operation of Breedyk Dairy and Break-Away Dairy), together with all offspring, proceeds and replacements thereof.

5. ALTERNATIVE DESIGNATION (if applicable) LESSOR/LESSOR OR CONSIGNEE/CONSIGNOR BAILEE/BAILEE SELLER/BUYER AD. LIEN NON-UCFILING
6. This FINANCING STATEMENT is to be filed (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) All Debtor(s) Debtor 1 Debtor 2
8. OPTIONAL FILER REFERENCE DATA

FILING OFFICE COPY - UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

BREEDYK & BREAKAWAY ACTIVITY SINCE FEBRUARY 2013

Payments Received - by Month		Charges - by Month		Balance
Date	Amount	Date	Total	\$
2/12-2/28/20:	146,682.80	2/12-2/28/2013	202,276.87	\$ 1,601,480.61
3/31/2013	216,113.15	3/31/2013	249,241.80	1,657,074.68
4/30/2013	275,057.29	4/30/2013	284,001.62	1,690,203.33
5/31/2013	385,283.27	5/31/2013	402,484.52	1,699,147.66
6/30/2013	340,803.53	6/30/2013	346,408.77	1,716,348.91
7/31/2013	313,067.07	7/31/2013	370,943.15	1,721,954.15
8/31/2013	454,058.15	8/31/2013	379,708.97	1,779,830.23
9/30/2013	321,681.75	9/30/2013	372,923.61	1,705,481.05
10/31/2013	395,547.03	10/31/2013	332,000.01	1,756,722.91
11/30/2013	340,385.10	11/30/2013	333,136.11	1,693,175.89
12/31/2013	159,334.84	12/31/2013	341,279.18	1,685,926.90
1/31/2014	495,652.19	1/31/2014	327,832.63	1,867,871.24
2/28/2014	337,986.07	2/28/2014	314,977.82	1,700,051.68
3/31/2014	317,860.96	3/31/2014	313,264.15	1,677,043.43
4/30/2014	161,345.21	4/30/2014	360,770.79	1,672,446.62
5/31/2014	360,770.79	5/31/2014	331,387.86	1,871,872.20
6/30/2014	505,123.94	6/30/2014	282,232.19	1,842,489.27
7/31/2014	301,126.32	7/31/2014	246,302.19	1,619,597.52
8/31/2014	251,653.02	8/31/2014	172,302.94	1,564,773.39
9/30/2014	225,181.06	9/30/2014	190,462.40	1,485,423.31
10/31/2014	236,589.06	10/31/2014	182,580.27	1,450,704.65
11/30/2014	258,615.75	11/30/2014	221,766.24	1,396,695.86
12/31/2014	302,610.11	12/31/2014	286,956.08	1,359,846.35
1/31/2015	137,400.52	1/31/2015	278,934.74	1,344,192.32
2/28/2015	391,322.09	2/28/2015	229,204.18	1,485,726.54
3/31/2015	256,319.19	3/31/2015	284,755.55	1,323,608.63
4/30/2015	274,739.94	4/30/2015	243,568.34	1,352,044.99
5/31/2015	213,531.65	5/31/2015	212,655.99	1,320,873.39
6/30/2015	235,320.32	6/30/2015	246,103.63	1,319,997.73
7/31/2015	126,505.58	7/31/2015	198,058.69	1,330,781.04
8/31/2015	205,698.69	8/31/2015	213,579.14	1,402,334.15
9/30/2015	218,877.25	9/30/2015	198,427.02	1,410,214.60
10/31/2015	198,769.26	10/31/2015	215,353.78	1,389,764.37
11/30/2015	374,522.43	11/30/2015	180,023.27	1,406,348.89
12/31/2015	207,363.11	12/31/2015	163,862.67	1,211,849.73
1/31/2016	164,888.99	1/31/2016	163,677.34	1,168,349.29
2/29/2016	88,258.13	2/29/2016	149,693.32	1,167,137.64
3/31/2016	214,157.45	3/31/2016	161,681.76	1,228,572.83
4/30/2016	88,825.43	4/30/2016	170,298.09	1,176,097.14
5/17/2016	5,000.00	5/17/2016	71,132.34	1,257,569.80
				1,323,702.14

